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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,863	04/12/2001	Tomoyuki Funaki	5259-000001	5194

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EXAMINER	
HANNE, SARA M	

ART UNIT	PAPER NUMBER
2179	

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/833,863	FUNAKI, TOMOYUKI	
	Examiner	Art Unit	
	Sara M. Hanne	2179	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 June 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,10,11,14,15 and 18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5, 10-11, 14-15 and 18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is responsive to the amendment received on 6/26/06. Amended Claims 1-5, 10-11, 14-15 and new claim 18 are pending in the application.

Allowable Subject Matter

2. Claims 4, 11 and 15 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action below.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 18 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 18 constitutes new matter and is not supported by the specification.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. As in Claims 4, 11 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The mode selector should be defined in the claims as a switch and not just an abstract idea.

7. Claim 18 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "recordal" has not been defined by the specification, nor does it have any ordinary, accepted meaning.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1-3, 5, 10, 14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eyzaguirre et al., US Patent 6353170, hereinafter Eyzaguirre, and further in view of Sonic Foundry's program ACID.

As in Claims 1, 10, and 14, Eyzaguirre teaches a performance information edit and playback apparatus, method and machine-readable medium comprising a first storage for storing style data, wherein the style data includes an accompaniment part and a percussion instrument part (Figure 7 and corresponding text) to be played

simultaneously with the accompaniment part, which constitutes a predetermined length of accompaniment and contains a series of musical tone event data arranged in time series ("Music samples are independent pieces of music composed by a musician and stored in memory ... each sample is one measure long.", Column 4, lines 36-38), a second storage for storing user's performance data created by a user, including performing parts wherein each of the constituent parts and the performing parts contains a series of musical tone event data arranged in time series ("Music samples are independent pieces of music composed by a musician and stored in memory ... each sample is one measure long.", Column 4, lines 36-38), a first display section for displaying contents of the performing parts included in the user's performance data in a time-series manner (Instrument row 730), a style selector for selecting a desired style data from among the style data in accordance with a user's instructions (Column 4, line 25 et seq.) and a controller for allowing a user to select one of the blocks to move the block being selected to a desired time-related position within a desired performing part displayed in the first display section (Column 4, lines 52-56), thus writing a series of the musical tone event data included in the part indicated by the selected block to the desired time-related position in the desired performing part (Figure 7 and corresponding text). While Eyzaguirre teaches inclusion of a piano accompaniment part and percussion part as seen in Fig. 7 which is composed by the user dragging and dropping parts to a time-related position, they fail to explicitly show whether their program teaches selecting a style which triggers the second display section to display a first block indicating an accompaniment part of the selected style and a second block

indicating a percussion part of the selected style as recited in the claims. In the same field of the invention, ACID teaches a composition creation program similar to that of Eyzaguirre. In addition, ACID further teaches user selection of a particular style (Close-Up screenshot, Ref. 1), and a second display section which displays a first block indicating an accompaniment part of the selected style (Ref. 4) and a second block indicating a percussion part of the selected style (Ref. 2 and 3) which may be dragged into the first display section (Ref. 6,7) and played along with user performance data (Ref. 5). It would have been obvious to one of ordinary skill in the art, having the teachings of Eyzaguirre and ACID before him at the time the invention was made, to modify the composition interface dragging and dropping constuent parts of musical tone event data taught by Eyzaguirre to include the specific selection of a style which provides blocks of accompaniment and percussion available for selection and placement of ACID, in order to obtain an interface for dragging and dropping blocks of musical tone event data that have been accessed through a user selected style. One would have been motivated to make such a combination because an organized file structure for grouping, storing and accessing blocks of music by their corresponding styles would have been obtained, as taught by ACID.

As in Claim 2, Eyzaguirre et al. teaches a pitch modifier for automatically modifying tone pitches of the selected constituent part of the style data (harmonizer program 310).

As in Claim 3, Eyzaguirre et al. teaches the first display section displays the content of the performing part included in the user's performance data as the block (Figure 7).

As in Claim 5, Eyzaguirre et al. teaches both of the accompaniment parts included in the user's performance data and the prescribed accompaniment parts included in the style data commonly share a same tone-generation channel or a same tone color (Col. 5, line 14 et seq.).

As in Claim 18, Eyzaguirre et al. teaches during a record mode, a perfrorming part has user record data written thereto in response to input by the user, and during and edit mode, the user moving a specific part of style data onto another part of user record data causes recordal of the specific part of the style data in place of the user record data (Col. 5, line 14 et seq.).

Response to Amendment

Applicant's arguments filed 11/30/05 have been fully considered but they are not persuasive. The diagrams noted by the applicant in the remarks have not been received by the office and therefore have not been considered.

In response to the applicant's arguments that Eyzaguirre fails to teach displaying a plurality of constituent parts regarding accompaniment, which are included in the style data selected by the style selector in units of blocks, the examiner disagrees. Eyzaguirre teaches "sample selector 720 allows the user to choose a sample in a certain style and apply it to the music by clicking and dropping in the desired place in

the work" (Col. 4, line 32 et seq.). Individual constituent parts may be selected in this manner as accompaniment to the other performance data, thereby selecting the corresponding style.

In response to the applicant's request that the Examiner note that the recited selector and playback devices are different, the examiner disagrees. The claims do not support separate devices. The examiner recognizes that the selector responds to selection of data, and that the playback device produces what has been created by the selector in parallel as written in the claims.

The arguments regarding Claims 6, 9, 12 and 16 on page 15 of the remarks have not been considered seeing as Claims 6, 12 and 16 are nonelected and Claim 9 has been cancelled.

Conclusion

The prior art made of record on form PTO-892 and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 C.F.R. § 1.111(c) to consider these references fully when responding to this action. The documents cited therein teach similar musical interfaces.

BA HUYNH
PRIMARY EXAMINER
9/16/06